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Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance: strengthening of the coordination of emergency humanitarian assistance of the United Nations

Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel

Report of the Secretary-General*

I. Introduction

1. The discussions in the Security Council on the protection for humanitarian assistance to refugees and others in conflict situations, the protection of civilians in armed conflict, and the protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones,[1] have brought to the fore the limitations of the 1994 Convention on the Safety of United Nations and Associated Personnel, and the inadequacy of its protective legal regime. Concerned at the rising toll of casualties among humanitarian personnel and the acts of physical violence, abduction, hostage-taking, kidnapping, harassment and illegal arrest and detention to which this personnel has been too frequently exposed, members of the Council stressed the need to ensure the safety and security of humanitarian and local personnel operating in hostile and volatile environments and deal more effectively with their protection.

2. In my report to the Security Council on the protection of civilians in armed conflict,[2] I pointed to the emerging consensus among Member States on the inadequacies of the Convention, and recommended that the Security Council invite the General Assembly to pursue the development of a protocol extending the scope of its legal protection to all United Nations and associated personnel not presently covered. Taking note of my report and of the range of views expressed by members of the Security Council during the debates on the protection of civilians in armed conflict, the General Assembly, in its resolution 54/192 of 17 December 1999, requested that I submit for its consideration, a report containing a detailed analysis and recommendations addressing the scope of legal protection under the 1994 Convention on the Safety of United Nations and Associated Personnel. My legal analysis of the scope of application of the 1994 Convention, which was elaborated by Member States and to which the United Nations is not a party, is without prejudice to the views of States, or the decisions of national or international jurisdictions, before which the perpetrators of any of the acts prohibited thereunder will be brought to justice.

* The present report is submitted following extensive consultations with all offices and departments concerned and an analysis of the existing practice in many field missions.

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II. Convention on the Safety of United Nations and Associated Personnel — a legal analysis

A. Criminalization of attacks against United Nations and associated personnel

3. The Convention on the Safety of United Nations and Associated Personnel was adopted by the General Assembly on its resolution 49/59 on 9 December 1994 and entered into force on 15 January 1999. Forty-three States are presently Parties to the Convention, of which none is a host to a United Nations peacekeeping operation. The Convention prohibits any attack against United Nations and associated personnel, their equipment and premises, and imposes upon States parties the obligation to ensure the safety and security of such personnel, and protect them from the crimes established under the Convention (article 7). The crimes against United Nations and associated personnel are any of the following: murder, kidnapping or other attack upon the person or liberty of a United Nations and associated personnel; a violent attack upon the official premises, private accommodation or means of transportation of such personnel; a threat to commit any such act, an attempt to commit it and an act constituting participation as an accomplice in any such attack. States parties to the Convention are bound to establish these crimes in their national laws, and make them punishable, taking into account their grave nature (article 9).

4. The Convention establishes the principle of "prosecute or extradite", whereby each State party is bound to establish its jurisdiction in respect of any crime or offender, when the crime was committed in its territory, or when the offender is its national. The State of habitual residence of the offender, if he is a stateless person, or the State of nationality of the victim, may also establish its jurisdiction over any such crimes. Alternatively, if any of these States decline jurisdiction, it is bound to extradite the offender to any other State having jurisdiction in the matter.

5. Attacks against United Nations and associated personnel which were criminalized under the 1994 Convention, were internationalized under the Statute of the International Criminal Court in 1998, and made subject to the jurisdiction of the Court. Under article 8 (2) (b) (iii) and (e) (iii) of the Statute, attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or a peacekeeping mission, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict, are considered "war crimes", in respect of which individual criminal responsibility is entailed. The Rome Statute, however, is not yet in force.

B. Scope of application of the Convention to United Nations operations and United Nations and associated personnel, and its limitations

1. United Nations operations

6. The Convention is applicable to United Nations operations and United Nations and associated personnel as defined in article 1. A "United Nations operation" is an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

> "(i) Where the operation is for the purpose of maintaining or restoring international peace and security; or
>
> "(ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;"

7. A United Nations operation of the first category is clearly any peacekeeping operation conducted under United Nations command and control, to the exclusion of United Nations authorized operations conducted under national command and control.[3] A United Nations operation of the second category mentioned in article 1 (c) (ii) of the Convention is any other United Nations presence in a host country established by a United Nations competent organ — though not necessarily the General Assembly or the Security Council — such as, United Nations political missions, "post-conflict, peace-building offices", and United Nations humanitarian, development and human rights presences. While the Convention is automatically applicable to peacekeeping operations, its applicability to other United Nations operations is conditional upon

a "declaration" by the General Assembly or the Security Council that there exists an exceptional risk to the safety of the personnel participating in the operation. As a "trigger mechanism" for the applicability of the Convention, the "declaration" is constitutive in nature, and must be made before any of the acts prohibited under the Convention are committed.

8. In the General Assembly's debates on the Convention, a number of Member States expressed confidence that in case of a reasonable concern about the degree of risk in any given operation, a declaration would be made by the General Assembly or the Security Council expeditiously, on time and as a matter of routine. They considered that the need to obtain a declaration would not be a bar to the application of the Convention and urged the Security Council, in case of doubt, to err on the side of protection and make a pre-emptive declaration. Others expressed reservations and doubts as to the practicality of the declaration, the lack of definitional criteria and its timeliness in practice. Yet others, doubted the justification of differentiating between the automatic application of the Convention to peacekeeping operations and its conditional application in case of other United Nations operations.[4] The concerns and reservations expressed in the debates were borne out in the practice of the Organization, where a great many United Nations, non-peacekeeping operations were deployed in risky, highly volatile and dangerous environments, and in respect of which no declaration has been made by either organ. The cases of recent United Nations political and humanitarian operations in Afghanistan, Burundi and East and West Timor, to name but a few, are illustrative of the inadequacy of the present legal regime.

9. The situation in Afghanistan has been characterized in recent years by periods of rough military parity, resumption of factional hostilities and sporadic fighting. In August 1998, a military adviser serving with the United Nations Special Mission to Afghanistan (UNSMA), was shot and killed while driving a clearly marked United Nations vehicle. Locally recruited staff members have been publicly beaten for alleged infractions of Taliban rules. In the statement by the President of the Security Council on behalf of the Council (S/PRST/2000/12) of 7 April 2000, the Security Council reiterated its grave concern at the continued Afghan conflict. It condemned the Taliban for the repeated forced entries into and searches of United Nations premises, and for the intimidation of United Nations personnel. The Security Council demanded that the Taliban stop these unacceptable practices and ensure the safety and security of all United Nations and associated personnel and humanitarian personnel working in Afghanistan in accordance with international law.

10. The United Nations Office in Burundi (UNOB) was established in October 1993 as a confidence-building measure. In 1996, three international personnel of the International Committee of the Red Cross were murdered; in 1998 an international staff member of the World Food Programme (WFP) was murdered; and in October 1999, in the course of an inter-agency humanitarian assessment mission, two international staff members of the United Nations Children's Fund (UNICEF) and WFP were brutally killed in an ambush. In a Presidential statement of 12 November 1999, the Security Council condemned the murder of United Nations personnel, and called upon the Government to undertake and cooperate with the investigations, and bring the perpetrators of the crimes to justice. In its resolution 1286 (2000) of 19 January 2000, the Security Council expressed concern at the continuing violence perpetrated by all parties, including non-State actors, and strongly condemned the murder of UNICEF and WFP personnel and Burundian civilians.

11. In its resolution 1246 (1999) of 11 June 1999 establishing the United Nations Mission in East Timor (UNAMET), the Security Council noted with concern my assessment that the security situation in East Timor remains "extremely tense and volatile". On the day of the consultations (30 August 1999), two local UNAMET staff members were murdered, and following the announcement of the results of the ballot, the security situation deteriorated and violence erupted. In the post ballot period, amidst a campaign of violence, looting and arson by pro-integration militia, five additional local UNAMET staff members were killed, and two others were declared missing. The situation in West Timor, in particular in the areas of the refugee camps, remains risky and volatile. On 6 September 2000, three international staff members of the Office of the United Nations High Commissioner for Refugees (UNHCR) were murdered by a militia-led mob, during a violent rampage. In its resolution 1319 (2000), the Security Council condemned the "outrageous and contemptible" acts against unarmed

international staff who were in West Timor to help the refugees; it insisted that the Government of Indonesia take immediate steps in fulfilment of its responsibility to disarm and disband the militia, and bring to justice those responsible for the attack.

12. The foregoing cases clearly demonstrate the inadequacy of conditioning the applicability of the Convention to United Nations non-peacekeeping operations on a "declaration" of an exceptionally risky situation. In all these cases, local staff of United Nations offices, and international staff of United Nations humanitarian agencies and non-governmental organizations, were murdered, attacked or otherwise targeted, and in one case, United Nations premises were invaded. In neither of these operations, however, did any of the United Nations organs declare that there existed an exceptional risk to the safety of its personnel, though many of their pronouncements amounted to the same effect.

2. United Nations and associated personnel

13. "United Nations personnel" are defined in article 1 (a) of the Convention to mean:

> "(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;
>
> "(ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

"'Associated personnel' are defined in article 1 (b) as:

> "(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;
>
> "(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;
>
> "(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency,
>
> to carry out activities in support of the fulfilment of the mandate of a United Nations operation."

14. United Nations personnel are accordingly members of all components of a United Nations peacekeeping operation, and officials and experts on missions of the United Nations present in their official capacity in the United Nations area of operation. United Nations associated personnel are: persons assigned by States and intergovernmental organizations, persons engaged by the Secretary-General, and persons deployed by a humanitarian non-governmental organization under an agreement with the Secretary-General or a specialized agency. It is with respect to humanitarian non-governmental organizations and locally recruited personnel, that the scope of application of the Convention has been in doubt.

Personnel of humanitarian non-governmental organizations

15. Personnel of humanitarian non-governmental organizations, not belonging to the United Nations family, are entitled to the protective regime of the Convention if their deployment in the United Nations area of operation has been pursuant to an agreement with the Secretary-General or a specialized agency, and for the purpose of carrying out activities in support of the fulfilment of the mandate of a United Nations operation (article 1(b) (iii) of the Convention). While the nature and content of such an agreement has not been defined in the Convention, it would be reasonable to assume that any contractual link or a treaty arrangement institutionalizing the cooperation between the United Nations and a non-governmental organization in support of a United Nations operation or in the implementation of its mandate, would meet the requirement of article 1 (b) (iii) of the Convention. In the practice of the Organization two kinds of agreements have been concluded between the United Nations and non-governmental organizations: "Partnership agreements" between UNHCR, UNDP, UNICEF, WFP or other United Nations bodies executing humanitarian programmes, and international or local non-governmental organizations for the implementation of specific projects, and Security Arrangements between the Office of the United

Nations Security Coordinator and non-governmental organizations participating in the implementation of assistance activities of the Organization.

16. "Partnership agreements" are concluded, as a matter of routine, between the UNHCR and a large variety of humanitarian intergovernmental and non-governmental organizations for the implementation of protection and assistance projects for the benefit of refugees. A model framework agreement for operational partnership between the UNHCR and non-governmental organizations ("implementing partners") has been devised as a framework for joint humanitarian action in favour of refugees. The agreement establishes the standards of conduct for both partners, the non-discriminatory, a-political, neutral and impartial character of humanitarian assistance, modalities of consultation and cooperation and exchange of information between the partners, the Governments concerned, United Nations agencies, local leaders and refugee representatives. Similar agreements exist between other United Nations bodies and non-governmental organizations relating to assistance to internally displaced persons and other victims of conflict.

17. Similarly, UNDP, in the field of sustainable human development, collaborates with national and international non-governmental organizations having the necessary capacities in their respective fields of expertise to carry out activities on behalf of UNDP. For each project, UNDP signs an agreement with the designated organization. The standard project cooperation agreement between UNDP and the non-governmental organization sets out the general terms and conditions of cooperation between the parties in all aspects of the project, and notably, the duration of the project, the general responsibilities of the parties, the status of the personnel employed by the non-governmental organization, and financial and operational arrangements.

18. In order to bring international non-governmental organizations having the status of an "implementing partner" within the United Nations security umbrella, a memorandum of understanding between the United Nations and an intergovernmental organization/non-governmental organization implementing partner regarding coordination of security arrangements, was prepared by the Office of the United Nations Security Coordinator and the Office of Legal Affairs. An "implementing partner", for the purpose of the memorandum of understanding, is any international non-governmental organization which has already entered into a contractual or a treaty arrangement with an organization of the United Nations system to implement a particular project. Under the memorandum of understanding, the United Nations undertakes to lend assistance for the protection of international staff of the implementing partner and to extend to it the application of the security plan; exchange security-related information, and in case of an emergency, provide travel assistance to the implementing partner on a reimbursable basis. The implementing partner undertakes to consult with and assist the United Nations designated official on all matters relating to security arrangements at the duty station. The memorandum of understanding on security arrangements has so far been signed by one inter-governmental organization, the International Organization for Migration, and nine non-governmental organizations in three countries.

Locally recruited personnel

19. In defining "United Nations and associated personnel", the Convention did not distinguish between international and locally recruited personnel. In peacekeeping operations, locally recruited personnel are considered "members of the civilian component of a United Nations peacekeeping operation", and in United Nations offices established away from headquarters, they are considered, with the exception of those assigned to hourly rate, as United Nations officials. In both cases, locally recruited personnel are entitled to a limited scope of privileges and immunities vis-à-vis their State of nationality; for the purposes of the Convention, however, they should be considered as falling within any of the categories of United Nations and associated personnel, according to the type of their contractual link with the organization.

III. Measures to strengthen the existing regime of the Convention

20. Pending the conclusion of a protocol extending the scope of application of the Convention to United Nations operations and categories of personnel not presently covered, three measures are suggested for the consideration of the General Assembly which, within the framework of the Convention, would strengthen its protective regime and give it full effect. They include:

(a) A procedure to initiate a "declaration" by the Security Council or the General Assembly;

(b) Designating the Secretary-General as the "certifying authority" for purposes of attesting to the fact of a "declaration" or an "agreement", and to the status of any of the United Nations and associated personnel;

(c) Incorporating the key provisions of the 1994 Convention in the status-of-forces or status of mission agreements concluded between the United Nations and States in whose territories peacekeeping operations are deployed.

A. Declaration of an exceptional risk to the safety of United Nations personnel

21. In order to give effect to the provision of article 1 (c) (ii) of the Convention and bring within the ambit of its protective regime all United Nations operations conducted in risky, dangerous or volatile environments, the Secretary-General intends to recommend to the General Assembly or the Security Council, as the case may be, that where there are sufficient warnings of immediate attacks or escalation of a conflict, a declaration that an exceptional risk exists to the safety of United Nations and associated personnel, be made. His recommendation for a declaration to that effect may be submitted at the time of the establishment of the United Nations operation, or at any time thereafter, and it should state that "the General Assembly/Security Council declares that, for the purposes of the Convention on the Safety of United Nations and Associated Personnel, there exists an exceptional risk to the safety of the personnel participating in the United Nations operation".

22. As a trigger mechanism for the application of the Convention, a declaration's major drawback is its impracticality in United Nations humanitarian operations, which are not, strictly speaking, "established" under any specific mandate, but deployed pursuant to a standing, statutory mandate. There is, therefore, no defined moment for the "establishment" of such operations which would determine the timing of a declaration and facilitate the procedure for its initiation.

B. Designating the Secretary-General as a "certifying authority"

23. Questions pertaining to the status of any victim of attack as a "United Nations or associated personnel" within the meaning of the Convention, or to whether a declaration of the Security Council or the General Assembly has been made and an agreement between a non-governmental organization and the United Nations concluded, are likely to arise in connection with an inter-State request "to prosecute or extradite", or trial proceedings before a national or an international jurisdiction. As the organ having full knowledge of the facts and an easy access to the information, the United Nations Secretariat will be required to assist States' authorities and jurisdictions in providing the necessary information. A "Secretary-General's certificate" issued upon request would attest to the fact and content of a "declaration", to the fact and content of an agreement, and to the status of a United Nations and associated personnel in question. Such a certificate should be accepted by States' authorities and jurisdictions as a proof of the facts attested therein.

C. Incorporating the Convention's key provisions into the status-of-forces or status of mission agreements

24. While the obligations under the Convention are binding upon States parties in the relationship between them, the incorporation of the Convention's key provisions in the status-of-forces agreements and status of mission agreements will ensure that such obligations are also binding upon the State in whose territory the peacekeeping operation is deployed in its relationship with the United Nations, and regardless of whether it is a party to the Convention. The obligations to prevent attacks against members of the operation, establish them as crimes punishable by law, and "prosecute or extradite" the offender, are the key provisions of the Convention which will be incorporated in future status-of-forces agreements and status of mission agreements. They would read as follows (a status-of-forces agreement is used as an example):

"(i) Obligation to prevent attacks against members of the peacekeeping operation

"The Government shall take all appropriate measures to ensure the safety and security of

members of [the United Nations peacekeeping operation]. In particular, it shall take all appropriate steps to protect members of the peacekeeping operation, their equipment and premises, from attack or any action that prevents them from discharging their mandate. This is without prejudice to the fact that all premises of the peacekeeping operation are inviolable and subject to the exclusive control and authority of the United Nations.

"(ii) Obligation to establish attacks against members of the peacekeeping operation as crimes punishable by law

"The Government shall establish the following acts as crimes under its national law, and make them punishable by appropriate penalties taking into account their grave nature:

"a. A murder, kidnapping or other attack upon the person or liberty of any member of the peacekeeping operation;

"b. A violent attack upon the official premises, the private accommodation or the means of transportation of any member of the peacekeeping operation likely to endanger his or her person or liberty;

"c. A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

"d. An attempt to commit any such attack; and

"e. An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack.

"(iii) Obligation to prosecute or extradite

"The Government shall establish its jurisdiction over the crimes set out in article [reference to (ii)], when the crime was committed in its territory and the alleged offender — other than a member of the peacekeeping operation — is present in its territory, unless it has extradited such person to the State of nationality of the offender, the State of his habitual residence if he is a stateless person, or the State of the nationality of the victim."

25. In incorporating the key provisions of the Convention into the status-of-forces agreements and status of mission agreements, the obligations to prevent attacks, criminalize them and "prosecute or extradite" the offender, will apply within the scope of application of the respective status-of-forces agreements and status of mission agreements and with regard to members of the United Nations peacekeeping operation only. United Nations associated personnel who are not covered under the status-of-forces agreements or the status of mission agreements will not be protected by the measure, and their unprotected status, in the circumstances, will remain.

26. In order to ensure the protection of United Nations personnel participating in other United Nations non-peacekeeping operations, a similar provision would be incorporated in host country agreements concluded between the United Nations and States in whose territories United Nations presences are deployed. In these cases as well, the applicability of the protective regime of the Convention to the United Nations personnel participating in the operation will be limited by the scope of application of the relevant agreement into which the key provisions of the Convention are incorporated.

IV. Protocol to extend the applicability of the Convention to all United Nations operations and associated personnel and humanitarian personnel not presently covered — elements for a protocol

27. The measures proposed in section III of the present report to enhance the protective regime of the Convention are of limited effect in that they do not operate to extend the scope of the protection, but only to strengthen it within the parameters of the Convention. In order to extend the scope of the Convention and ensure its automatic application to all United Nations operations and categories of personnel beyond those presently covered, a Protocol to the Convention disposing of the conditionalities of a "declaration" or an "agreement", would be required.

28. To facilitate the elaboration of a Protocol to extend the scope of application of the Convention and its protective regime to other United Nations

operations and categories of personnel not presently covered, set out for the consideration of Member States are elements for a Protocol based on the principle of automatic application of the Convention to all United Nations operations regardless of the security situation prevailing at the time and place of the attack, and to all humanitarian inter-governmental and non-governmental organizations, present in the United Nations area of operation but not necessarily linked to it, provided they carry out humanitarian relief activities in a neutral, impartial and non-discriminatory manner. In that latter respect, States may consider extending the scope of the protection even further to all such humanitarian agencies operating in an area where no United Nations presence is simultaneously deployed.

29. In order for all United Nations operations to be automatically included in the protective regime of the Convention in the same way that peacekeeping operations are, the requirement for a "declaration" as a condition for its applicability must be dispensed with. The volatile, risky or dangerous situation at the time and place of the attack should not be considered as an element of the crime, or otherwise a condition for the applicability of the Convention, as indeed it is not in the case of peacekeeping operations.

30. The provision extending the Convention to all United Nations operations may read as follows:

> "The protective regime of the Convention shall extend to all United Nations operations or presences established in a host country pursuant to a standing or a specific mandate of a United Nations competent organ, and in respect of all United Nations and associated personnel participating in such United Nations operations and presences."

31. Alternatively, and if the requirement for a "declaration" is nevertheless retained, States may wish to empower the Secretary-General, instead of or in addition to the Security Council or the General Assembly, to declare that an exceptional risk exists to the safety of United Nations personnel participating in any given operation. This would streamline the process for a declaration and ensure its timeliness. The definition of a United Nations operation under the Protocol, would accordingly read:

> "(c) 'United Nations operation' means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:
>
> "(ii) Where the Security Council, the General Assembly or the Secretary-General has declared, for the purposes of the Convention and the present Protocol that there exists an exceptional risk to the safety of the personnel participating in the operation."

32. In order for the Convention to apply to all personnel of humanitarian non-governmental organizations, the requirement for a contractual link between their organizations and the United Nations for the purpose of their legal protection should be dispensed with. While "implementing partnership" agreements for the implementation of a specific project would still be required in the interest of both parties and for the purpose of a more efficient and coordinated assistance, they would no longer be required as a condition for conferring upon personnel of a humanitarian inter-governmental or non-governmental organization legal protection from attack against the person, accommodation or equipment of such personnel.[5]

33. The relevant provision in the protocol may read as follows:

> "The protective regime of the Convention shall extend to all persons deployed by intergovernmental, non-governmental and other agencies engaged in a humanitarian relief operation [in the United Nations area of operation] in an independent, neutral, impartial and non-discriminatory manner."

V. Conclusions

34. In the six years that have elapsed since the adoption of the Convention the limitations of its scope of application to United Nations operations and United Nations and associated personnel, have become apparent. The Convention is not applicable to United Nations operations which have not been declared by the General Assembly or the Security Council to be exceptionally risky. In practice, no declaration has ever been made to that effect by either organ, notwithstanding the actual need for it in many United Nations operations. The Convention is also not

applicable to humanitarian non-governmental organizations which have not concluded "implementing/partnership agreements" with the United Nations or its specialized agencies, though in practice they are in no less a need for such protection. The Convention is finally not applicable, and was never intended to apply to humanitarian non-United Nations operations.

35. Pending the conclusion of a Protocol extending the scope of application of the Convention which may or may not be ratified by some or all of the States parties to the Convention, measures have been suggested which, within the parameters of the Convention, would strengthen its protective regime and give it full effect. The optimal solution remains by far a Protocol which would dispose of the need for a "declaration" in case of United Nations operations and dispense with the link between a humanitarian non-governmental organization and the United Nations as a condition for protection under the Convention.

Notes

[1] The discussions on the protection for humanitarian assistance to refugees and others in conflict situations (S/PV.3932 of 29 September 1998); the protection of civilians in armed conflict (S/PV.3977 and S/PV.3978 of 12 February 1999 and of 16 and 17 September 1999); (S/PV.4046 and (Resumption 1) and (Resumption 2); and the protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones (S/PV.4100 and S/PV.4100 (Resumption 1) of 9 February 2000). See also, Presidential statements S/PRST/1997/13, S/PRST/1998/30 and S/PRST/2000/4; General Assembly resolution 52/167 of 16 December 1997, General Assembly resolution 53/87 of 7 December 1998.

[2] A/54/619-S/1999/957.

[3] Expressly excluded from the scope of the Convention are United Nations operations authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations, in which any of the personnel are engaged as combatants against armed forces and to which the law of international armed conflict applies. Members of such operations remain protected and bound by the principles and rules of international humanitarian law applicable to such conflicts. Article 20 (a) of the Convention provides in this respect that nothing in the Convention shall affect the applicability of international humanitarian law in relation to the protection of United Nations operations and United Nations and associated personnel, or the responsibility of such personnel to respect such law and standards. The exclusion from the scope of application of the Convention of Chapter VII United Nations operations carried out in situations of international armed conflict, gives rise to the suggestion that enforcement actions carried out in situations of internal armed conflict (UNOSOM II type of operations), are included within the scope of the Convention and subject to its protective regime. It will eventually be for the practice of States or any of the competent national or international jurisdictions, to clearly delineate the distinction between the mutually exclusive regimes of international humanitarian law and the protective regime of the Convention. In the final analysis, it is not the nature of the conflict which should determine the applicability of international humanitarian law or that of the Convention, but whether in any type of conflict, members of United Nations peacekeeping operations are actively engaged therein as combatants, or are otherwise entitled to the protection given to civilians under the international law of armed conflict.

[4] *United Nations General Assembly, Official Records, Forty-ninth Session*, 84th meeting, pp. 15, 17, 18-19; Ibid., *Forty-ninth Session, Sixth Committee*, 29th meeting, paras. 21, 43; Ibid., 30th meeting, para. 4.

[5] In conditioning the protection to humanitarian non-governmental organizations on an agreement with the United Nations, the Convention has, in fact, limited the protection to which they are entitled under international humanitarian law in situations of armed conflict (see article 71 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), of 8 June 1977; and article 8 of the Statute of the ICC).